

### **REMARKS**

Claims 1-19 are the pending claims being examined in the application. Claims 1, 10, 18 and 19 are independent. Claims 1, 3, 12, and 19 have been amended. No new matter is presented. Claims 8 and 13 have been canceled without prejudice. Claim 7 was previously canceled without prejudice. Reconsideration and further examination are respectfully requested.

Claims 1-6, 8-13, and 16-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2004/0148634 (Arsenault) in view of U.S. Patent No. 6,859,840 (Singal) and in further view of U.S. Publication No. 2003/0016630 (Vega-Garcia); Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Arsenault in view of Singal in view of Vega-Garcia, and further in view of U.S. Publication No. 2004/0128343 (Mayer); Claim 15 was rejected under 35 U.S.C. §103(a) as being unpatentable over Arsenault in view of Singal in view of Vega-Garcia, and further in view of U.S. Publication No. 2003/0037331 (Lee). Reconsideration and withdrawal of the rejections are respectfully requested for at least the following reasons.

Claim 1 recites a system comprising a mass storage device; a processor; a bandwidth measurement module executed by the processor for dynamically determining, during transfer of a content file over a network, a bandwidth of a network connection over which the content file is being retrieved; a download manager executed by the processor for retrieving, and storing in the mass storage device, a portion of the content file, the download manager determining a size of the portion to retrieve in response to the determination made by the bandwidth measurement module; and a presentation manager executed by the processor for retrieving the portion of the content file from mass storage and displaying the portion with a media player application, wherein the download manager retrieves a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file.

Arsenault discloses a method and apparatus for providing virtual video on demand (VOD) services. The method and apparatus disclose the storing of a segment of the video program in advance for VOD viewing at a later time. When the subscriber selects VOD service, a pre-stored video segment is retrieved for presentation to the subscriber. Remaining video program segments simultaneously broadcast on a plurality of channels are recorded in parallel while the pre-stored video program segment is retrieved and presented to the user.

Singal discloses a method and system for delivering media objects across a communication network comprising multiple edge server computers controllably connected to at least one client computer and at least one origin server computer. The media object is stored on the origin server computer; a prefix is stored on at least one edge server computer, where the prefix includes a beginning portion of the media object, and a size of the prefix is determined, at least in part, by anticipated demand for the media object. The prefix is transmitted from the edge server computer to the at least one client computer; and the media object is transmitted to the at least one client computer subsequent to the prefix such that transmission of the prefix and the media object is delivered to the at least one client computer without interruption.

Vega-Garcia describes a method and system for dynamically altering the transmission settings of one or more computing devices engaged in a real-time communication session. The devices exchange meaningful and dummy control packets according to a standard control protocol. The approximate bandwidth available on the network is then calculated based on the difference in arrival times between at least one of the dummy control packets and at least one of the meaningful control packets. Once the approximate bandwidth available on the network is computed, the one or more devices adjust outgoing audio and video data streams using a quality control mechanism. The quality control mechanism enables the one or more devices to transmit data in a way that maximizes the user experience during the real-time communication session.

Independent claim 1 recites, in part:

the download manager determining a size of the portion to retrieve in response to the determination made by the bandwidth measurement module;

The Office Action states that Arsenault does not disclose the above claim element and relies on Singal as curing the deficiencies of Arsenault. The Office Action specifically states that the above claim element is described in Singal at Fig. 5, col. 6, lines 50-67, and col. 7, lines 1-20. These passages and Figure of Singal describe its servers determining the content to stream to Singal's users. Applicant respectfully submits that Singal does not teach or suggest a download manager executing on a client computer for retrieving, and storing in a mass storage device a portion of a content file, the download manager determining a size of the portion to retrieve in response to the determination made by the bandwidth measurement module, as claimed in independent claim 1.

The Office Action states that “[a]lthough it is not explicitly disclosed to measure the size of the preloaded prefix based on the bandwidth, it would be obvious to apply the same logic used for the scenario in which the file is unavailable to calculate these prefix sizes.” (Office Action, Page 7). Applicant respectfully submits that it is not obvious to determine a size of a portion of a content file to retrieve in response to a determination made by a bandwidth measurement module and respectfully requests that, if the Examiner persists in this rejection, the Examiner provide documentary evidence for this claim element. For example, how could the same “logic” be used to determine the size of a portion of a file to retrieve if the file is unavailable?

Vega-Garcia does not cure the deficiencies of Singal and Arsenault. Vega-Garcia discloses a method and system for dynamically altering the transmission settings of one or more computing devices engaged in a real-time communication session. The devices exchange meaningful and dummy control packets according to a standard control protocol. The approximate bandwidth available on the network is then calculated based on the difference in arrival times between at least one of the dummy control packets and at least one of the meaningful control packets. Once the approximate bandwidth available on the network is computed, the one or more devices adjust outgoing audio and video data streams using a quality control mechanism.

Vega-Garcia does not, however, disclose the claim elements recited in independent claim 1 and absent from Singal and Arsenault, as discussed above regarding determining file portion size. As a result, Claim 1 is patentable over Arsenault, Singal, and Vega-Garcia, and Applicant respectfully requests that the Examiner withdraw the rejection. Nor could Arsenault, Singal, and/or Vega-Garcia, alone or in combination with any other reference of record, render Claim 1 obvious, as no such combination would yield all of the elements in the presently recited claims. Therefore, Arsenault, Singal, and Vega-Garcia cannot form the basis of a proper § 103 rejection and a combination with other references would not form the basis of a proper § 103 rejection. Therefore, Applicant respectfully requests withdrawal of these rejections.

For at least the foregoing reasons, Claim 1 and the claims that depend from Claim 1 are believed to be in condition for allowance. In addition, for at least the same reasons, Claims 10, 18, and 19 are believed to be in condition for allowance; thus, the claims that depend from Claims 10 are also believed to be in condition for allowance. In view of the foregoing, the entire

application is believed to be in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Arsenault, Singal, Vega-Garcia in view of Mayer. Claim 10, from which Claim 14 depends, claims similar features to claim 1. It is respectfully submitted that Mayer does not remedy the deficiencies noted above with respect to claim 1. Therefore, Applicants submit that a combination of Arsenault, Singal, Vega-Garcia, and Mayer would not yield all of the elements in the presently cited claims, and therefore the combination cannot form the basis of a proper obviousness rejection.

Claim 15 was rejected under 35 U.S.C. §103(a) as being unpatentable over Arsenault in view of Singal in view of Vega-Garcia, and further in view of Lee. It is respectfully submitted that Lee does not remedy the deficiencies noted above with respect to claim 1. Therefore, Applicants submit that a combination of Arsenault, Singal, Vega-Garcia, and Lee would not yield all of the elements in the presently cited claims, and therefore the combination cannot form the basis of a proper obviousness rejection.

Having responded to all objections and rejections set forth in the outstanding Office Action, it is submitted that the currently pending claims are in condition for allowance and Notice to that effect is respectfully solicited. Additional characteristics or arguments may exist that distinguish the claims over the prior art cited by the Examiner, and Applicant respectfully preserves their right to present these in the future, should they be necessary. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicant's undersigned representative.

The Applicant's attorney may be reached by telephone at 212-801-9220. All correspondence should continue to be directed to the address given below, which is the address associated with Customer Number 76058.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-1561. Please ensure that the Attorney Docket Number is referenced when charging any payments or credits for this case.

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Respectfully submitted,

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